

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MALCOLM REAY

Appeal No. 2002-1443
Application No. 09/251,833

ON BRIEF

Before ABRAMS, McQUADE, and NASE, Administrative Patent Judges.
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 13-22 and 24-29, as amended after the final rejection, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a griddle plate with an infrared heating element. An understanding of the invention can be derived from a reading of exemplary claim 13, which has been reproduced below.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Person	1,051,967	Feb. 4, 1913
McWilliams <u>et al.</u> (McWilliams)	3,833,793	Sep. 3, 1974
Schreder	4,788,414	Nov. 29, 1988
Payne	4,816,647	Mar. 28, 1989
Adamson <u>et al.</u> (Adamson)	Re. 32,994	Jul. 25, 1989

Claims 13-19, 22, 24, 25 and 27-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Adamson in view of Person and Payne.

Claims 20 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Adamson in view of Person, Payne and Schreder.

Claim 21 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Adamson in view of Person, Payne and McWilliams.¹

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the Answer (Paper No. 21) and the final rejection (Paper No. 14) for the examiner's complete

¹The rejection of claims 19 and 20 under 35 U.S.C. § 112, second paragraph, which was set forth in the final rejection (Paper No. 14), was not repeated in the Answer and we shall consider it as having been withdrawn by the examiner.

reasoning in support of the rejections, and to the Brief (Paper No. 20) and Reply Brief (Paper No. 22) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

At the outset, we point out that the test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

The appellant describes his invention as an improved cooking appliance that is relatively simple in construction and inexpensive to manufacture and provides uniform distribution of heat over the entire surface of a griddle plate. Independent claim 13 sets forth the invention in the following manner:

13. A cooking appliance comprising:

a housing;

a lower platen mounted to said housing;

a positioning mechanism mounted to said housing;

an upper platen mounted to said positioning mechanism, said positioning mechanism being operable to move said upper platen between a cooking and a non-cooking position with respect to said lower platen; and

a heating assembly for heating said lower platen, said heating assembly comprising a non-contact infrared heating element disposed within said heating assembly such that there is a space between said non-contact infrared heating element and said lower platen and such that said lower platen is substantially uniformly heated, wherein said infrared heating element emits radiation that is substantially in the wavelength of about 900 to 4,000 nanometers.

The examiner has rejected claim 13 as being obvious in view of the combined teachings of Adamson, Person and Payne. Specifically, the examiner has found that all of the subject matter recited in claim 13 is disclosed by Adamson except for the non-contact infrared heating element spaced from the lower platen and providing substantially uniform heating at a radiation wavelength of about 900 to 4,000 nanometers. As we understand the examiner's position, one of ordinary skill in the art

would have found it obvious to modify the Adamson appliance by replacing the disclosed heating element with a spaced non-contact infrared heating element in view of the teachings of Person “to provide uniform heating across the lower platen without having hot spots,” and providing the infrared heating element with the claimed wavelength in view of Payne (Paper No. 14, pages 2 and 3). The appellant argues in rebuttal that there is no suggestion or motivation in the applied references to modify Adamson in the manner proposed by the examiner, and that even if such modifications were made, the resulting appliance would not meet the claim requirement of a “substantially uniformly heated” lower platen (Brief, pages 6 and 7).

Adamson discloses in Figure 5 a cooking appliance comprising a housing, a lower platen mounted to the housing, and an upper platen mounted on a positioning mechanism and movable between a cooking position and a non-cooking position with respect to the lower platen. Adamson states that the lower platen “is heated by heaters which may be of the electrical or gas type, if desired” (column 4, lines 3 and 4). The heaters in the embodiment of Figure 5 are described as being cast aluminum heating units (18a-18c) heated by electrical heating elements (19a-19c), with the heating elements being shown as embedded in the heating units. The heating units in Figure 5 are “attached as by bolts to the underside of the lower cooking platen” (column 4, lines 6 and 7). As it turns out, no other embodiments are shown or described in the reference.

With respect to the subject matter of claim 13, Adamson fails to disclose or teach the following four of the features recited in claim 13:

- (1) The heating assembly having a non-contact infrared heating element.
- (2) The heating element being disposed such that there is a space between the element and the lower platen.
- (3) The heating element being disposed such that said lower platen is substantially uniformly heated
- (4) The radiation wavelength of the heating element being about 900 to 4,000 nanometers.

As to (4), the appellant has not challenged the examiner's finding that it was known in the art at the time of the appellant's invention to utilize infrared radiation heaters having a radiation wavelength of 900-4,000 nanometers in cooking appliances, as taught by Payne.

Person discloses an electric heater comprising an enclosure(1) within which are a plurality of heating coils (7), each installed in a slot (4) in a plastic base (3) of insulation material. For cooking, Person provides a grid plate (16) and a cover or top plate (17) "which may be readily removed or entirely eliminated" (page 1, lines 90-92).

Person further explains

said plate being provided with a plurality of slots or channels to align with the slots 4 of the insulating base 3. By arranging the slots in the grid plate so as to align with the longitudinal channels of the composition body, the heat units which radiate from the heating coils 7, may readily pass through said slots to be quickly absorbed by the articles placed on the grid plate" (page 1, lines 80-89).

The “slots” in the grid plate to which Person refers are not numbered and are located between adjacent flat ribs of the grid plate (16), which also are not numbered. The slots are shown in the cutaway portion of Figure 1, and it is clear that if the cover plate (17) is removed or eliminated, heat from the heating coils would flow directly to the food being heated thereon.

While Person provides a non-contact infrared heating assembly that is spaced from the grid and cover, it is our view that the examiner’s conclusion that the heat applied to the platen is uniform “because of the heated air between the heating element and the platen,” and because “the structure recited in the reference is substantially identical to that of the claim” (Answer, pages 3 and 4) is merely conjecture. From our perspective, because each heating coil is placed in a trough in the insulating material, and owing to the presence of the ribs and slots in the grid, on its face the Person heater would appear not to be uniformly heating the heating grid cover (17) but would, as the appellant has urged on page 6 of the Brief, provide a plurality of stripes of hot spots thereon, the result of which would be uneven heating. In fact, the appellant provided evidence in support of this contention by virtue of the Second Declaration Under Rule 132 of Malcolm Reay, which was provided along with an amendment (Paper No. 15) that was entered by the examiner when the appeal was filed (Paper No. 16). In this declaration Mr. Reay, after establishing his expertise in the field of electric and gas heating systems for food service appliances, states his opinion that in the Person

heater “[m]ost of the heat radiated by the elements is directed by the channels through the slots so as to produce a parallel row of heat lines or stripes on the surface of plate 17. That is, the stripes are hot spots and, therefore, the heating is uneven and non-uniform” (declaration, page 3). The examiner did not comment upon these assertions, and thus they stand uncontroverted on the record. It therefore is our view that even if the proposed modification were made, the result would not be the subject matter recited in claim 1, that is, a heater so disposed as to provide substantially uniform heat to the platen. The rejection therefore would not be sustainable on this basis.

Furthermore, as we stated above, we consider the Adamson system not to provide uniform heating to the platen, which the examiner asserted would have provided the suggestion to make the proposed modification. Absent such suggestion, we fail to perceive any incentive in either Adamson or Person which would have led one of ordinary skill in the art to replace the heating elements disclosed in Adamson with those of Person.

For the two reasons set forth above, it is our opinion that the applied references do not establish a prima facie case of obviousness with regard to the subject matter recited in claim 13. This being the case, we will not sustain the rejection of independent claim 13 and, it follows, of dependent claims 14-19, 22, 24 and 25.

Independent claim 28, which stands rejected on the same grounds, also contains the requirement for the platen to be “substantially uniformly heated” by the infrared

radiation, and therefore the reasoning set out above also is applicable here. The rejection of claim 28 and claim 29, which depends therefrom, is not sustained.

Dependent claim 20 recites that the insulation upon which the heating elements are mounted extend above the side walls of the container within which it is positioned. The examiner has cited Schreder for this teaching. Be that as it may, Schreder does not alleviate the shortcomings pointed out above in the combination of references applied against claim 1, from which claim 18 ultimately depends. Therefore, we will not sustain the rejection of claim 20.

Schreder was also applied against dependent claim 26. For the same reason as is set forth immediately above with regard to claim 20, we will not sustain the rejection of claim 26.

Dependent claim 21 stands rejected on the basis of Adamson and Person, taken further with McWilliams, cited for teaching securing a heating element by means of staples. The problems with the rejection of claim 1, from which claim 21 depends, are not cured by McWilliams and thus we will not sustain this rejection.

CONCLUSION

None of the rejections are sustained.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS
Administrative Patent Judge

JOHN P. McQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

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OHLANDT, GREELEY, RUGGIERO & PERLE, L.L.P.
ONE LANDMARK SQUARE, NINTH FLOOR
STAMFORD, CT 06901-2682